



STATEMENTS AND SPEECHES

INFORMATION DIVISION
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No. 58/9 CANADIAN VIEWS ON FISHING ZONES AND TERRITORIAL WATERS

As prepared for delivery in committee by the Hon. George A. Drew, P.C., Q.C., Chairman of the Canadian Delegation to the International Conference of the Law of the Sea, Geneva, March 17, 1958.

...We are here to consider one of the most carefully prepared documents ever to come before any conference. From November 1947, when it was appointed by a resolution of the General Assembly of the United Nations, until July of 1956 when it completed its final report, the International Law Commission examined every aspect of the Law of the Sea. In addition to the very distinguished members of the Commission itself, many men of great experience and ability from most of the countries represented here at this time had an opportunity to express opinions and contribute something to the final result. The members of the Commission received evidence, advice and suggestions from every part of the world. It is doubtful if any argument can now be presented which has not already been given careful consideration by those who finally prepared the report that is now the basis of our discussion. We are, of course, not bound to accept every recommendation without challenge. Some subjects are deliberately left open by the Commission for decision here. However, I do respectfully suggest that where the Commission has come to a definite decision and has made a clear and positive recommendation, the presumption should be in favour of accepting that recommendation unless there are equally clear and compelling reasons to the contrary.

We have our own reservations about some of the recommendations and shall put them forward when the various articles are under examination in the committees to which they have been assigned. The fact that I do not go into detail in my remarks today about any particular section or article is merely a recognition of the fact that, in general, we agree with the findings of the report and are mainly concerned about the details which can best be discussed when the particular article is under consideration.

I think I should emphasize that it is of the utmost importance to Canada that there be clearly defined laws of the sea universally applied throughout the world. Merely to indicate the measure of our concern about this subject, may I take the time to place some facts before the committee which may not be generally known. We are the only country bounded by three oceans, the

Atlantic on the east, the Pacific on the west, and the Arctic on the north. Including the very large islands on the east, west and north, we have a coastline of more than 30,000 miles or 55,000 kilometres, approximately the same as that of the U.S.S.R. They are, in fact, much the longest coastlines in the world and in both cases they are rich fishing grounds for most of their length.

Off our coasts lie old and historic fishing areas from which many countries have been drawing rich harvests for centuries. On the west our salmon, halibut and other fish have been caught by Canadian and United States fishermen for many years. On the east, the Grand Banks of Newfoundland have been fished regularly by Portugal, Spain, France and several other countries. In fact, two years ago Portugal celebrated the 500th anniversary of the first of their annual fishing expeditions to the Grand Banks in a colourful ceremony at St. John's, Newfoundland. That goes back long before the beginning of our life as a nation. I mention this because these fishing resources are of interest not only to ourselves but to many other countries whose ships have continued their rewarding efforts for so many years.

The interest of different nations in this subject is also brought into perspective by the size of their annual catch of fish and other sea food. May I give the last figures available, those for 1956, for the first fifteen countries in terms of metric tons. These were the catches in 1956: Japan, 4,763,000; the United States, 2,936,000; Continental China, 2,640,000; U.S.S.R., 2,617,000; Norway, 2,129,000; Canada, 1,077,000; United Kingdom, 1,050,000; India, 1,012,000; Germany, 771,000; Spain, 749,000; Indonesia, 652,000; Union of South Africa, 555,000; France, 538,000; Iceland, 517,000; Portugal, 471,000. When it is remembered that China has over 600,000,000 people, the U.S.S.R. over 200,000,000, the United States 170,000,000, and Japan 90,000,000, it will be realized that the Canadian catch for a population of 17,000,000 people does constitute a very important part of their economic life. In fact, it is not without significance that Canada, with a third of the population of the United Kingdom, has a larger annual catch. I have placed these figures before you only to establish the fact that when we speak of our interest in fishing we are discussing something that is of very great practical importance to our people, particularly to those living along our long coastline, who depend so largely upon fishing for their livelihood and sustenance.

We are also very directly interested in everything related to the navigation of the seas and the freedom of the seas. In 1956, cargoes were loaded on ships in our ports to the total of 50,000,000 tons. I should also mention the new and rapidly expanding means of transportation which will be greatly affected by the decisions here. We have commercial aircraft lines already flying to many parts of the world and rapidly extending their services for passengers and freight. The routes they can follow and the services they can give, as much to the people of other lands as to our own, will depend upon decisions made here in regard to the area over which there is real freedom of the sea because that measures in turn their right to freedom of the air.

I have mentioned these subjects only to make it clear that when we place our arguments before you with the utmost respect for the opinions expressed by the representatives of every other country, we are not speaking of something merely of legal or academic concern but rather about things which will have a very important bearing on the prosperity of our people and the economic development of our country.

We do most earnestly hope that this conference may reach agreement on every important question which has been placed before us. I find it difficult to believe that anyone here has not been deeply moved by the knowledge that these eighty-seven delegations which have been brought together come as close to representing the whole of mankind in one particular field of activity as has ever happened at any time. I feel sure that every one of us has been impressed by the spirit of goodwill and the genuine desire to find common grounds of understanding in dealing with subjects in which we all have a mutual interest.

There is little doubt that there is general agreement on most points covered by the report. We also know that there is a wide divergence of opinion in regard to some particular articles which are of the utmost importance to all of us. May I presume to suggest now that when we come to the detailed consideration of those articles, time may be gained if the articles which are known to be contentious are deferred so that the committees can proceed quickly to reach agreement upon the subjects about which there is little dispute. I make this suggestion, not for the purpose of postponing a decision, but because we could then establish a wide basis of agreement early in the conference. I think it is not too much to hope that the spirit of friendly co-operation which would be generated in this way might well make it easier for us to tackle our more difficult problems later. There would also be opportunities in the meantime for all of us to discuss privately the various possible solutions of those particular questions.

The speeches which have been made during this general debate have dealt mainly with the distance over which authority is to be exercised in controlling fishing rights in coastal waters and also in the measurement of the territorial sea. I think it is clear that on all other subjects general agreement will not be too difficult. Many countries, including Canada, are greatly interested in the continental shelf. There are some differences of opinion. Nevertheless, I think there is sufficiently general agreement as to the principles involved to find common ground without too much difficulty. Then there is the new field of law embraced in the effort to assure freedom of the sea to the landlocked states. Canada will do everything it can to assure the right of landlocked states to the use of the high seas which Prince Wan has so aptly described as "the common heritage of all mankind." We will welcome suggestions and advice and will co-operate wholeheartedly in an effort to make it possible for landlocked states to carry their trade with other parts of the world in their own ships. But these and other similar subjects about which there is broad agreement in principle if not yet in detail will best be advanced by examination of specific proposals in each committee.

When it comes to the question of the area within which full authority may be exercised over fishing rights and the extent of the territorial sea I do think that much has been gained by the exchange of opinions in this general debate so that on the one hand the differences which do exist may be understood and on the other hand some obvious misunderstandings may be corrected. When I speak about these subjects on behalf of Canada I think it is appropriate that I should explain that in this case I am speaking on behalf of Canada in a way that is not always possible in a democratic country where differences of opinion are freely expressed. We are in the fortunate position that there is no difference of opinion in our country about what is known to most of you as "The Canadian Proposal." It was put forward at the General Assembly of the United Nations on December 7, 1956, by the representative of the preceding government in Canada. It was repeated in a memorandum to the Secretary-General of the United Nations by the present government on September 10, 1957, and it has received general approval by all parties in the Canadian Parliament.

Fishing Zone

We believe Canada should be able to reserve exclusive fishing rights for its own fishermen within a contiguous zone of 12 miles from the coastal baseline as defined by Articles 5 and 6. We believe that Article 66 should be amended to add the control of fishing to those subjects already covered by Section 1. This would seem to be the most satisfactory and most practical way of dealing with this subject because it comes logically under the article relating to a contiguous zone over which control will be exercised rather than any of the articles which deal with fishing on the high seas.

In seeking exclusive national jurisdiction over fishing within a 12-mile limit from the baseline we are not disregarding the arguments which have been put forward in favour of retaining a 3-mile limit over fishing as well as the territorial sea. We are impressed by the statements which have been made by the distinguished representatives of the United Kingdom and other countries as to the effect of such an extension of national jurisdiction over fishing upon their own fishing in distant waters. We would greatly regret that any decision by this conference might substantially reduce their annual catch. We do hope that satisfactory alternative arrangements can be made by agreement between the states concerned. In any event, we have imposed a 12-mile fishing limit on our own trawlers since 1911 for the protection of our shore fisheries. Thus within a 12-mile contiguous zone our own fishing trawlers have been denied by law the right to fish for 47 years. It is only natural that we should seek an international law which will impose the same restriction upon trawlers from other countries fishing in the waters off our coasts.

It is significant that many other countries have already adopted the same contiguous zone for other purposes. It is not merely a question of the area which may be required for conservation. That varies according to local conditions. It may be debatable whether a 12-mile zone is required for most conservation plans. However, it does seem reasonable that a country should have some prior claim upon the stocks of fish heavily concentrated in an area where the local population is dependent on them for their livelihood. Twelve miles may not be scientifically exact. However, it has been sufficiently well established that the International Law Commission recognized it to the extent of declaring that neither contiguous zones nor territorial waters should be extended in any case beyond that distance. Perhaps it may be regarded as a figure of convenience as are many other figures which reasonably interpret a particular requirement just as the 3-mile limit has over so many years.

We understand the natural desire of less-developed countries which so greatly depend upon the food resources of the sea to exercise the widest possible control over the waters which supply their food, particularly when they have not the financial resources to equip and maintain long range fishing fleets. Fishermen are the same all over the world. It is the small fisherman in Canada, as elsewhere, who faces all the dangers to harvest the food from the sea. Community after community depend upon their efforts and their success. It is for them that we seek 12 miles of exclusive fishing rights with the contiguous zone. We are naturally sympathetic to the claims of some of the Latin American countries and others, whose distinguished representatives have explained their own particular fishing problems and the reasons why they have sought control over such wide contiguous zones. But we are inclined to think that in view of the recommendations of the International Law Commission it is most unlikely that there could be agreement upon the approval of anything more than a 12-mile contiguous zone. We do therefore respectfully urge those who seek more to accept the 12-mile zone as the widest area of national control over fishing upon which there is likely to be agreement, except for arrangements in regard to conservation or other special considerations of that kind.

Territorial Sea

Now I come to the question of the territorial sea. This would seem to be the most contentious question which will properly come before this conference for debate. At first glance, it might seem that if it is desirable to extend the area of control over fishing, the simplest way would be to extend the territorial sea to whatever distance is required. I submit, however, that the two are not bound together in any way and that very unhappy results could follow the adoption of this apparently simple rule of thumb. As a representative of the Canadian Government said in the General Assembly on December 7, 1956, "the general extension of the breadth of the territorial sea could have important consequences for the freedom of sea and air navigation." The same point was raised in the Canadian Memorandum to the Secretary-General of the United Nations on September 10, 1957.

It is important for us to remember that those consequences could impose very serious limitations on the freedom of the sea as well as the flight of commercial aircraft which is becoming an increasingly vital means of communication and trade between all countries of the world. I do hope that in the discussions which take place when Article 3 is before the committee there will be no uncertainty about the fact that exclusive fishing rights can be exercised up to the 12-mile limit whatever the measure of the territorial sea may be below that figure.

Let us then examine the question of the territorial sea strictly on its own merits. Whatever arguments may be used to support the retention of the 3-mile limit, I would like to say that there are some arguments that I have heard which in our opinion definitely do not apply. First is the suggestion already mentioned that the territorial sea needs to be extended to the same width as the contiguous zone established for the control of fishing. Second is the argument that this is a sign of progress. With every respect for the opinion of those who have expressed this view I do most strongly contend that it would be the very opposite. The extension inwards of the high sea to within 3 miles of the coast has been the most striking evidence of the progressive expansion of the freedom of the seas. If we started to move the area of free navigation farther out from the coasts we would, in fact, be setting the clock back 300 years.

Canada is a young country, in time of actual development, probably one of the youngest here. We want progress. I think without undue immodesty we may claim to have achieved some substantial measure of progress. Our eyes are in the future. We want the widest possible freedom of the sea for the movement of our ships and the movement of our aircraft which are now flying millions of miles every year in the peaceful carriage of passengers and goods. We want the same freedom for all nations to bring their trade to our shores and to the shores of all lands. It is not only the road to prosperity. It is the road to peace.

Let me mention another argument which has been used in support of extending the territorial sea. A very distinguished and very able delegate said to me in all earnestness, "after all, the 3-mile limit was set when gun range was three miles. We must move with the times and recognize that we need a greater area for defense. "Now let us examine this proposition. As we are a very large country with a relatively small population it is unlikely that anyone will think we would look at this problem except from the point of view of defense. What are the realities?

I doubt very much if 3 miles was ever adopted because of the range of cannon. I think one marine league happened to be a figure of convenience. At the time it was suggested I doubt very much if there was a single cannon which fired that far. Nevertheless, this theory did gain acceptance. We are indebted to a distinguished Dutch jurist, Cornelius van Bynkershoek, for his classic definition of this principle of gun range in his declaration

in 1703 that "the jurisdiction of a coastal state should extend seaward as far as the effective range of land-based weapons." If we were, in fact, to follow that principle today what use would a few miles be. In days of guided missiles, jet aircraft and other long range land-based weapons it would be necessary to extend the coastal sea for thousands of miles. In fact, there would be no free sea left for anybody. Another interesting reference has been made to this subject in the discussions here. There has been some suggestion that powerful nations are making this claim for their own selfish purposes. I must say that I fail to see the slightest sign of any evidence to support such a claim. No person who has read history will argue that in days gone by great naval powers did not seek to assert very broad claims based upon that power. However, the new principle under which we have lived for 300 years was settled in the 17th century following the argument based upon the contending claims of Seldon and Grotius who had written their classic works "Mare Clausum" and "Mare Liberum." It was the doctrine of Mare Liberum which prevailed. Over the long years since that decisive turning point in history the tendency has been to extend the freedom of the seas more and more. The extension of full freedom of the high seas to within 3 miles of a coastal state has been the ultimate development of that principle. What a tragedy it would be if we now turned backwards after that steady march of progress.

Now I come to the suggestion that every state should be free by its own declaration to determine that the territorial sea adjacent to its coast may be anywhere from 3 to 12 miles. Nothing is said about the distinction between a contiguous zone covering fishing and other important matters of that kind and the measurement of the territorial sea which carries with it entirely different consequences. I hope that every delegate here, and particularly the delegates from states with limited coastlines and perhaps no coastlines at all, whose main interest would seem to be to assure the widest possible freedom of the sea, will consider carefully the distinction between full control over fishing in a contiguous zone, and also the other important rights which can be embraced in such a clearly defined zone, without at the same time placing the territorial sea upon the same basis and making it subject to some variable rule such as has been suggested. However sincere the purpose may be, however convincing the arguments may have seemed, I do urge the most careful consideration of what the adoption of this proposal would mean. The acceptance by this conference of the doctrine that any state may at any time according to its own passing whim establish a zone for any purpose of 3 to 12 miles from the baseline along its coast would result in nothing short of legalized anarchy. It would not be law. It would be chaos. We came here to make law, not to destroy it. Let no one underestimate the seriousness of the situation if such casual juggling of territorial boundaries were cloaked with the sanctity of international law. Unfortunately past experience has demonstrated only too clearly that uncertainty of that kind is not conducive to peace.

If only we examine the facts carefully, I believe we will all find that we are not very far apart and that we can agree upon a generally acceptable law of the sea. It is my earnest hope that after careful consideration the great majority of the delegates at this conference will reach agreement in regard to exact figures for the measurement of the contiguous zone and territorial sea. With profound respect for the opinions of representatives of countries much more populous than our own and not forgetting our comparative youth as a nation, we still do hope you may find merit in our proposal that there be a 12-mile contiguous zone in which there is complete national control over fishing and freedom of the seas up to 3 miles from the accepted baselines.

In closing may I once again refer to the great opportunity and the stirring challenge with which we are confronted. Whatever our religious faith may be I am sure each one of us will echo the words of promise that David sang for the comfort of all men. "He maketh wars to cease unto the end of the earth." Surely that is the hope of the people of every country now meeting here in this lovely city of peace. By agreement within the particular sphere of activities in which we all have a common interest, we may well help create a new and refreshing atmosphere that will dispel the clouds of cynicism which have darkened our path and give to all of us a spirit of understanding and good will upon which alone can be built that just and lasting peace which is the fervent hope of all mankind.

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